STATE OF VERMONT
GREEN MOUNTAIN CARE BOARD

In re: Rutland Regional Medical Center, Construction of Medical Office Building; Renovations to Loading Dock, Dietary, and Vermont Orthopedic Clinic; and Upgrades to Site Drainage and Detention Pond System	)	GMCB-012-17con

STATEMENT OF DECISION AND ORDER

Introduction

On August 16, 2017, Rutland Regional Medical Center (RRMC, the hospital, or the applicant) requested a certificate of need (CON) for construction of a two-story medical office building; expansion and renovation of its existing loading dock and portion of the dietary area, replacement of its freight elevator; renovation of the Vermont Orthopedic Clinic building; and upgrades to its site drainage and detention pond system. The cost of the project is $23,883,569.

For the reasons outlined below and subject to the conditions contained herein, we approve the application.

Procedural History

On May 17, 2017, RRMC submitted a letter of intent with the Board to construct a new medical office building (MOB), expand and renovate its loading dock and a portion of its dietary area; replace its freight elevator; renovate the Vermont Orthopedic Clinic (VOC) building; and upgrade its site drainage and detention pond system. The hospital filed its CON application on August 16, 2017, notice of which was published on the Board's website on August 18, 2017. On August 30, 2017, the Office of the Health Care Advocate (HCA) intervened in the proceeding.

During the application process, the Board twice requested and received additional or clarifying information from the applicant to assist with its review. On November 15, 2017, the Board closed the application. The Board held a hearing on the application at its December 14, 2017 public board meeting. General Counsel Judith Henkin served as hearing officer by designation of Chair Kevin Mullin. Tom Huebner (President and CEO), Judi Fox (Vice President of Fiscal Services and CFO), Jim Greenough (Vice President of Corporate Support Services), Dr. Mel Boynton (Chief Medical Director), and George Martin (LN Consulting, Inc.) testified on the applicant's behalf.

The Board received no written public comment on the application. During time reserved for public comment at the close of the hearing, one member of the public offered comment. Neither the applicant nor the HCA submitted post-hearing memoranda.

Jurisdiction

The Board has jurisdiction over this matter pursuant to 18 V.S.A. § 9375(b)(8) (the Board shall review, approve, approve with conditions or deny CON applications) and 18 V.S.A. § 9434(b)(1) (hospital's capital expenditures that exceed $3 million are subject to CON review).

Findings of Fact

1. The applicant proposes a three-faceted capital project at a total cost of $23,883,569. Application (App.) at 2; CON Table 1-3, Income Statement updated, Table 1.[1]

2. The first component of the project is a new two-story, 36,935 square foot (sq. ft.) medical office building with connectors to the main hospital. App., MOB Budget Estimate at 2. The MOB will be energy-efficient, and includes a water source heat pump system which heats and cools the building using electricity. Hearing Transcript (TR) at 27-28.

3. The MOB will house the hospital's ears, nose, throat and audiology (ENTA) practices on the first floor and orthopedic and physiatry practices on the second floor. App. at 2; Response (Resp.) to Questions, (Sep. 29, 2017) at 1 (Attachment explaining question 3); Floor Plan; TR at 4-5. Co-locating ENTA, orthopedics and physiatry will allow the practices to share resources and facilities and achieve workflow efficiencies. App. at 4, 6.

4. The hospital's orthopedic practice, the Vermont Orthopedic Clinic, provides a range of services including athletic injuries, knee surgery, foot and ankle surgery, reconstructive hip and knee surgery, orthopedic trauma care, hand surgery and orthopedic spine surgery. App. at 2. This practice has an excellent reputation including recognition for hip and knee replacement procedures. App. at 2; TR at 6-7. It often will see 150 patients a day, and in a typical week sees around 500 patients. TR at 11. Approximately 100 orthopedic cases annually are from outside of RRMC's primary service area. App. at 2; TR at 6-8.

5. VOC is currently housed in an aging wood-frame building on the far side of the RRMC campus, which houses 16 clinicians in a space originally intended for four. The building is overcrowded, the examination rooms are small, and the corridors are so narrow that two wheelchairs cannot pass each other. App. at 2; TR at 5-6.

6. At 13,743 sq. ft., the proposed MOB will provide each of the 16 clinicians (VOC's twelve plus physiatry's four) with approximately 859 sq. ft. of space. App. at 2. Although less than the industry average of 1,500 sq. ft. per provider, the hospital plans to make efficient use of the space through careful scheduling, and plans to utilize team rooms instead of private offices. App. at 2; TR at 6, 22. The applicant plans to increase the number of orthopedic exam rooms from 19 to 27, but advised the Board that it will not be adding new orthopedic procedures or providers, and no additional orthopedic procedure or operating rooms. Resp. (Sept. 29, 2017) at 1 (Attachment explaining question 2); TR at 7-8.

[1] The application and the applicant's responses to the Board's interrogatories include several unlabeled and unpaginated attachments. To the extent possible, we refer to these attachments by document title and use internal pagination.

7. The hospital's ENTA practice of two surgeons, physician assistants, and audiologists are currently housed in rented space off-campus that does not meet the needs of the providers or their patients. The audiology waiting room cannot accommodate a wheelchair and more than three people, and the public bathroom, which must be accessed by going outside to a different space, is not large enough for a patient in a wheelchair and a caregiver. App. at 2-3. The new MOB space will address these issues and increase the number of exam and procedure rooms from 13 to 18. Resp. (Sept. 29, 2017) at 1 (Attachment explaining question 2); TR at 12-13.

8. Although the applicant will not expand the breadth of clinical equipment as part of this project, it plans to replace older computed radiography x-ray equipment with a GE Proteus Digital Radiography machine that provides superior image quality and functionality. The applicant also plans to replace audiometric and laboratory equipment, furniture, and fixtures, at a total cost of $1,925,561. Resp. (Sept. 29, 2017) at 1 (Attachment explaining question 11).

9. Site work for the new MOB will include 150 additional parking spaces to accommodate patients at a cost of $1,084,097, and an expansion of its detention pond at a cost of $650,000. App. at 3, Table 1; Resp. (Sept. 29, 2017) at 2.

10. The second component of the project involves a $1,745,567 renovation of the vacated VOC building, which will be used to house administrative offices including the hospital's finance and human resource departments, currently located off-campus in rental spaces. Once the renovation is complete, RRMC will terminate the existing leases. App. at 3-4; Resp. (Sept. 29, 2017) at 2; TR at 15.

11. The final component of the project encompasses the expansion and renovation of the hospital's loading dock, a portion of its dietary area, and replacement of a 60-year old freight elevator at a cost of $3,220,165. App. at 3-4.

12. The hospital's loading dock has largely been unmodified since it was built in 1958. It cannot accommodate modern tractor trailers and loads, and only one of the two docks is large enough to accommodate pallets. There is no staging area for large deliveries, creating unsafe conditions for hospital staff tasked with moving materials in or out of the area. This component of the project renovates and expands the loading dock, and includes 6,640 sq. ft. of new construction. App. at 3; TR at 13-14.

13. The current dietary area, located directly above the loading dock, is now shared by eight staff with only two work stations. Resp. (Sept. 29, 2017) at 2 (Attachment explaining question 6); TR at 14. The project will add 2,338 sq. ft. to be used for office space for the dietary manager and dietician, and to create locker space for staff. App. at 3.

14. The applicant budgeted $8,000,000 for the MOB in its hospital budget submission for fiscal year (FY) 2016 and $27,375,000 in FY 2017. It also budgeted $1,500,000 for the loading dock renovation in FY 2016 and $3,500,000 in FY 2017. Both components were incorporated into the hospital's FY2018 budget at a cost of $21,692,069. App. at 7.

15. The applicant assumes 3.4% growth in net patient revenue (NPR) and an operating margin of 2.4% both before and after the project. Although the applicant states that it can meet the Board's annual net revenue caps without increasing rates as a result of the project, *see* App. at 9; TR at 20, its CEO surmised at hearing that if the rate of "general inflation" increases, particularly for the cost of labor, the hospital would need an NPR growth rate of no less than 3.0%, or would reduce hospital services. TR at 43-44.

16. The applicant also assumes that its payer mix and utilization will remain unchanged over the next three years, despite increased patient throughput and national trends showing an increase in the utilization of orthopedic services. App., Utilization Projections, Table 8; TR 34-38.

17. The applicant anticipates that no staff reductions will be made as a result of the project. App., Staffing Report. The hospital will realize $566,199 in savings through the elimination of four leases by 2023. App. at 3-4.

18. The hospital will finance the project with a $21,692,069 construction loan, and estimates financing costs to be $1,765,787 for capitalized interest and $425,713 for issuance. App. at 5; Financial Table 2.

19. The applicant is currently considering four financing options: 1) publicly offered fixed rate tax-exempt bonds; 2) a fixed rate private loan with a bank; 3) a variable rate private loan with a bank; and 4) financing through the United States Department of Agriculture's Direct Loan Program. App. at 5. For the purposes of the application, the applicant assumes financing through 30-year publicly offered fixed rate tax-exempt bonds—the highest-cost debt mechanism. App. at 5; TR at 15-18. If the applicant were to utilize one of the other financing options, the financing costs would be less. *Id.*

20. The applicant will record financing for the project as a current liability until the project is complete, and then will record the debt as long-term to repay the construction loan starting in 2020. Resp. (Oct. 26, 2017) at 2-3.

21. The applicant has extensively planned for this project over several years, and has included it in its multi-year capital and financial planning process since 2016. App. at 9; TR at 19-21. With a low debt-to-equity ratio, the hospital has sufficient debt capacity to support the project. App., Balance Sheet – with project; TR 19-21 (explaining the hospital's debt management strategy).

Standard of Review

Vermont law requires an applicant to meet a series of eight criteria before a CON will issue. 18 V.S.A. § 9437; Green Mountain Care Board Rule (Rule) 4.000. The applicant bears the burden to demonstrate that each of the criteria is met. Rule 4.000, § 4.302(3).

Conclusions of Law

Under the first statutory criterion, the applicant must show that the application is consistent with Vermont's Health Resource Allocation Plan (HRAP). The HRAP, last updated in 2009, identifies needs in Vermont's health care system, resources to address those needs, and priorities for addressing them on a statewide basis. 18 V.S.A. § 9437(1). We conclude that the applicant has demonstrated that this project is consistent with the relevant HRAP standards. *See, e.g.*, Standard 1.4 (volume of services is positively correlated to better quality, applicant can maintain appropriate volume, and project will not erode volume at any other Vermont facility); Standards 1.9, 1.10, 1.11, 1.12 (project is cost-effective, energy efficient and conforms with FGI Guidelines); Standard 3.4 (project was included in hospital budget submissions); Standard 3.7 (equipment is fully depreciated); Standard 3.23 (equipment is needed, reduces costs and/or improves quality); Standard 3.24 (no conflicts of interest).

Under the second criterion, an applicant must demonstrate that the project cost is reasonable because the applicant can sustain any financial burden likely to result from the project's completion; the project will not cause an "undue" increase in the costs of care, and that "less expensive alternatives do not exist, would be unsatisfactory, or are not feasible or appropriate." 18 V.S.A. § 9437(2). In determining whether the project will unduly increase the costs of care, the Board considers factors including the financial impact on the facility's services, expenditures and charges, and whether the impact is outweighed by the project's benefits to the public. 18 V.S.A. § 9437(2)(B).

At a cost of over twenty million dollars, this project represents a significant capital investment for RRMC, which it will fund entirely through new debt. Finding of Facts (Findings) ¶¶ 1, 18. As explained in the application and at hearing, the applicant has identified four potential sources of financing. Finding ¶ 19. Under any of the four financing scenarios, however, the applicant has the debt capacity to undertake the project. Finding ¶ 21 (applicant can support the project even assuming the most expensive financing source).

The applicant has asserted that the costs of care will not unduly increase as a result of the project. Finding ¶ 15. We are concerned, however, that it has chosen an ambitious assumption regarding NPR growth, and that it may in the future reduce the services it offers, should there be an increase in "general inflation," particularly in the costs of labor. *Id.* While we agree that a potential uptick in the rate of growth of the cost of labor is external to this particular capital project—which does not expand services or staffing—we nonetheless condition this CON on the applicant's ability to limit its NPR growth in accordance with our annual budget guidance and orders, even if our NPR target is less than 3.0%. Additionally, we require that the applicant promptly notify the Board, and provide a corrective course of action, if necessary, should any external economic factors jeopardize its compliance.

Countering our concern, we find that the project will benefit the public and remedy facility shortcomings that must, in time, be addressed. *See, e.g.*, Finding ¶ 12 (loading dock has been largely unchanged since 1958, and cannot accommodate large loads); Finding ¶ 7 (using the bathroom requires leaving the building; space does not fit wheelchaired patient and caregiver). The newly constructed MOB will better accommodate both providers and patients. Findings ¶¶ 6, 7. Additionally, the project will eliminate four leases, and their associated costs. Finding

¶ 17. We similarly find that the project is sufficiently limited in nature, and that more cost-effective alternatives are not available that will provide the same benefits.

The third criterion requires the applicant to demonstrate an "identifiable, existing, or reasonably anticipated need" for the project. 18 V.S.A. § 9437(3). RRMC's current orthopedics, ENTA, and physiatry spaces are small, outdated, and do not meet the needs of patients or providers. *See, e.g.*, Finding ¶ 5 (current VOC space intended for four providers, and now houses 16); Finding ¶ 7 (limited area for patients in audiology waiting room). The current loading dock and dietary spaces are even older and in need of updates; the loading dock does not accommodate modern loads and poses a safety risk to personnel moving materials in or out of the hospital area, and the dietary area has an insufficient amount of workspace for the number of workers. Findings ¶¶ 12, 13. The project will provide solutions to each of these identified needs. In addition, moving RRMC's administrative offices onto hospital-owned space will produce substantial cost-savings through the elimination of current lease agreements. Findings ¶¶ 10, 17. For these reasons, we conclude that the applicant has demonstrated an identifiable and existing need for each component of this project, and has therefore satisfied this criterion.

Under the fourth criterion, the project must either improve the quality of health care, provide greater access for Vermonters, or both. 18 V.S.A. § 9437(4). We are persuaded that this project will improve access to health care by providing sufficient space for the provision of ENTA, orthopedic and physiatry services and through the co-location of these services, which will allow these practices to share resources and facilitate workflow efficiencies. Finding ¶ 3. The project will also improve access through the construction of 150 additional parking spaces for patients. Finding ¶ 9. The applicant has thus met this criterion.

We next conclude that the project will not have an adverse impact on other services the applicant provides. 18 V.S.A. § 9437(5). The applicant has carefully planned for this project and its cost has been reflected, in whole or in part, in RRMC's recent hospital budget submissions. Findings ¶¶ 14, 21. Though the project adds three ENTA procedure rooms, it does not involve additional providers or new procedure or operating rooms for orthopedics. Indeed, the primary focus of the project is to provide new facility space to adequately support the hospital's current ENTA, orthopedic and physiatry services. The applicant has stated that it will not increase rates because of this project. Finding ¶ 15.

At hearing, however, the applicant raised concerns about a potential inflationary rise in the cost of labor—its largest expense—and advised the Board that if the pace of general inflation were to increase, it would require an NPR of 3.0% to maintain all of its services. Finding ¶ 15. While this scenario is only speculative, if it were to materialize, any impact on services would be the result of inflationary pressure, rather than caused by the capital spending associated with this project. No matter the source, however, we will continue to monitor the applicant's financial indicators through CON reporting and the hospital budget process, and we caution the applicant to restrain spending and NPR growth to the extent necessary to remain within our budget guidance and orders.

The sixth statutory criterion, that the project serves the public good, has been met for all the reasons discussed throughout this decision. 18 V.S.A. § 9437(6). For example, the project

enlarges and modernizes the space available for patients and providers, advances worker safety on the loading dock by expanding the area to modern standards, and ensures there is sufficient space in the dietary area for the number of workers. *See* Findings ¶¶ 2, 6, 7, 12. The seventh criterion is met to the extent it is applicable. 18 V.S.A. § 9437(7) (applicant must consider availability of transportation services). Combining all ENTA, orthopedic and physiatry providers in the same building, located on RRMC's campus and attached to the hospital, *see* Finding ¶ 3, should make access by car and public transportation more convenient than it was before the project.

The final criterion relates specifically to new health care technology projects, and to the extent it may be relevant, we conclude it has been satisfied.

Conclusion

Based on the above, we conclude that the applicant has demonstrated that it has met each of the required statutory criterion under 18 V.S.A. § 9437. We therefore approve the application and issue a certificate of need, subject to the conditions outlined therein.

SO ORDERED.

Dated: January 23, 2018 at Montpelier, Vermont.

s/ Kevin Mullin, Chair*	
	GREEN MOUNTAIN
s/ Jessica Holmes	CARE BOARD
	OF VERMONT
s/ Robin Lunge	
s/ Tom Pelham	
s/ Maureen Usifer	

* *Chair Mullin has filed a separate concurrence.*

Filed: January 23, 2018
Attest: s/ Erin Collier, Administrative Services Coordinator

Mullin, concurring.

I agree with the other members of the Board that the applicant has met the criteria for the issuance of a certificate of need. I wish to raise two areas of concern, however, that I believe require particularly close monitoring, and if left unchecked could be antithetical to our overarching goal to contain spending while improving the health care system in Vermont.

First, it is well known that there has been continuing pressure to increase compensation for high-producing providers, particularly in the area of orthopedics; the applicant's own Chief of Orthopedics acknowledged as much at hearing. *See* TR at 9 (Dr. Boynton characterized orthopedic surgeons as "the expensive, highly invasive doctors"). This is in large part because the orthopedic unit is a profit center of the hospital, which can help subsidize other departments that do not generate profits but which provide needed services. Although I agree that Vermonters should get the best, high quality care available, I worry that our hospitals are too reliant on "buying" quality providers and assume that good providers must receive outsized salaries, without sufficient consideration of the effect on our overall health care costs.

My second concern is that despite the applicant's assumption that utilization will remain flat once the project is completed, there is evidence that utilization of orthopedic services is on the rise nationwide. TR at 36 (Dr. Boynton confirms that nationally, services are projected to "substantially" increase). While the applicant explained that it does not plan to add providers and that the existing practices have limited bandwidth for more patients, it did not reject the prospect of increasing orthopedic utilization in the future if there is a demand for the services. *See* TR at 36 (Dr. Boynton testifies that he can't predict how many people will seek orthopedic services three years from now). As I commented at hearing, I do not believe we should discourage business coming from outside of the state, which can help fund hospital operations, but I am concerned with the upward pressure that increased utilization will place on net patient revenue (NPR). The applicant, and also the Board, must be attuned to, and responsive to, such pressure and find ways, *i.e.*, reduce prices, to keep NPR within Board-set parameters.

Other than these few points which I believe should be highlighted, I agree with the majority's decision.

Dated: January 23, 2018 at Montpelier, Vermont

s/ Kevin Mullin
Chair, Green Mountain Care Board